

## **EXHIBIT A**

**Treece, Joshua**

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**From:** Treece, Joshua  
**Sent:** Friday, November 12, 2021 9:09 AM  
**To:** Scott Fitzsimmons; Conley, Todd; Golimowski, Jeff; Simmons, Justin; Stemland, Karen  
**Cc:** Kathy Barnes; Sarah Bloom; Greg Wagner  
**Subject:** RE: BAE v Fluor - Case 587 - Motion to Stay Discovery and to Bifurcate

Scott:

First, I neglected to mention that we have already met and conferred on both the stay and bifurcation at length, and the same is reflected in our 26(f) Report. See (Dkt. 55) ("BAE raised the possibility of ... a motion to bifurcate and stay discovery during the conference.... Fluor stated that it does not believe discovery should be stayed.... Fluor [stated it] would oppose the motion to bifurcate for separate trial and to stay discovery"). Thus, we have already fully conferred on these issues.

As to the informal conference, in my experience, this is not the type of issue that the conference is designed or intended to address. This is not a discovery dispute about the scope of a request where an informal conference could help shape a compromise. It is a simple yes or no proposition.

Although we fully met and conferred already, we are nonetheless available on Monday to discuss further, if you think that could somehow be beneficial. Let us know what time works. I am generally available.

Thanks,

Josh

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**From:** Scott Fitzsimmons <sfitzsimmons@watttieder.com>  
**Sent:** Thursday, November 11, 2021 5:57 PM  
**To:** Treece, Joshua <jtreece@woodsrogers.com>; Conley, Todd <Todd.Conley@wbd-us.com>; Golimowski, Jeff <Jeff.Golimowski@wbd-us.com>; Simmons, Justin <jsimmons@woodsrogers.com>; Stemland, Karen <kstemland@woodsrogers.com>  
**Cc:** Kathy Barnes <kbarnes@watttieder.com>; Sarah Bloom <sbloom@watttieder.com>; Greg Wagner <gwagner@watttieder.com>  
**Subject:** RE: BAE v Fluor - Case 587 - Motion to Stay Discovery and to Bifurcate

**\*\*EXTERNAL EMAIL\*\***

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Josh -

Should BAE file a Motion to Stay or Bifurcate tomorrow, such Motion will be in direct violation of Paragraphs 6 and 7 of Judge Urbanski's procedures and Scheduling Order (ECF 48 and 57-1). Specifically, as a non-dispositive discovery motion, BAE is required to jointly contact Judge Ballou, hold a conference, then file a motion. ECF 48 ("[b]efore filing any discovery motions, the parties are directed to contact the magistrate judge by telephone in an effort to resolve the issue.").

Immediately filing a motion would also violate the Parties' Joint Rule 26(f) Report and Discovery Plan (ECF 55), which provides that "'meet and confer" discussions must occur within 5 business days of a request for such a conference. A Motion should be filed only if the Parties are unable to resolve a discovery dispute through the meet-and-confer process.

We are attempting to schedule a call with Fluor tomorrow to discuss BAE's possible Motion and should be prepared to engage in "meet and confer" discussions by Mon. Please let us know when you are available. Should BAE elect to violate the Court's procedures then Fluor would oppose any such Motion.

Scott P. Fitzsimmons | Senior Partner

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**From:** Treece, Joshua <[jtreece@woodsrogers.com](mailto:jtreece@woodsrogers.com)>

**Sent:** Thursday, November 11, 2021 2:26 PM

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**Subject:** FW: BAE v Fluor - Case 587 - Motion to Stay Discovery and to Bifurcate

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Scott & Kathy:

BAE is planning to file a Motion to stay discovery in Case 587 tomorrow, to (1) stay discovery pending resolution of the outstanding dispositive motions and Rule 12(f) Motion scheduled for a hearing in January 2022, and (2) in the event the January 2022 hearing does not resolve the entire case, bifurcate the case to resolve the following key contract interpretation issues first:

1. The contract's assignment of design responsibility and whether any percentage-completion warranty existed for a preliminary concept developed by a Lauren (the "Lauren Design"); and
2. Enforceability and application of the contract's \$30M damages cap.

We understand from our prior discussions that Fluor is not willing to agree on bifurcation. If that has changed, please let us know.

Further, please let us know whether or not Fluor agrees to stay discovery in Case 587 pending resolution of the outstanding dispositive motions and Rule 12(f) Motion.

If Fluor agrees that a stay of discovery is appropriate pending resolution of the outstanding dispositive motions and Rule 12(f) Motion, BAE may consider waiting to file its bifurcation motion.

Please let us know your position before close of business tomorrow.

Thanks,

Josh

Joshua Treece

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